

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/25/2021 6:27:29 PM
To: Fugh, Justina [Fugh.Justina@epa.gov]
Subject: RE: Followup re consent from Massachusetts for Melissa Hoffer

Sorry for the multiple pings (I forgot I had asked Carrie to reach out to you). Thanks for attending to this so quickly on your day off!

Steven Neugeboren
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From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 1:11 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: Followup re consent from Massachusetts for Melissa Hoffer

Hi,
Today's my compressed day off but I am working now. I just had to be off in the morning to take my older dog to the vet. So let me find Steve's note from the weekend and get back to you today.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Monday, January 25, 2021 12:53 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: Followup re consent from Massachusetts for Melissa Hoffer

Hi, Justina – Sorry to bother as I know you are super busy right now but wondering whether there has been any followup on the items noted in Steve's email below (see red below – i.e. re Melissa getting consent from her former employer, the State of Massachusetts). Just asking as we are needing to consult with Melissa ASAP about the WOTUS litigation....
Thanks.
Carrie

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From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Saturday, January 23, 2021 3:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?

With regard to the WOTUS cases to which Mass. is **not** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is from a state).

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.

Under her bar restrictions, I believe you said that she may be able to participate in those cases if she received the consent of her former employer, but you were going to check the relevant bar rules. I wasn't sure which state bar rules you would need to check (it seemed like the location of the case was relevant – the first paragraph above lists the jurisdictions of the cases to which Mass is a party and filed an amicus brief).

Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.

Thanks so much for your help!

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From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,

As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
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Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	<i>Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA</i> , Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	<i>Labor Council for Latin America, NRDC, et al. v. EPA</i> , Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	<i>NRDC v. Wheeler</i> , Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	<i>Walters v. Flint, EPA, et al.</i> , Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.

Justina

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